

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SAN FRANCISCO UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2013020409

ORDER DENYING STUDENT'S
REQUEST TO VACATE EXPEDITED
DUE PROCESS HEARING

On February 11, 2013, Student filed a Due Process Hearing Request (complaint) naming the San Francisco Unified School District (District). On March 6, 2013, the Office of Administrative Hearings (OAH) determined that Issues 2 and 3 of Student's complaint were subjected to the expedited due process proceedings. On March 7, 2013, Student filed a request to re-characterize the issues, which is treated as a motion to vacate expedited hearing dates.

APPLICABLE LAW

A child with a disability has procedural rights when faced with a change in educational placement caused by a violation of a code of student conduct. (34 C.F.R. §§ 300.530, 300.532, 300.536 (2006).)

Within 10 school days of a decision by a school district to change the placement of a child with a disability based upon a violation of a code of conduct, the district must convene an Individualized Educational Program (IEP) meeting with the purpose of determining whether the conduct was a manifestation of the student's disability. (34 C.F.R. § 300.530(e)(2006).) If the IEP team determines that the conduct was not a manifestation of the disability, then the school district may apply relevant disciplinary procedures applicable to children without disabilities, except that the district must continue to provide educational services and, when appropriate, perform a functional behavioral assessment of the student. (34 C.F.R. § 300.530(c), (d)(i), (ii) (2006).) If the IEP team determines that the conduct was a manifestation of the disability, then the school district must conduct a functional behavioral assessment or review an existing behavioral intervention plan, and return the student to his or her educational placement, unless special circumstances apply. (34 C.F.R. § 300.530(f)(1) (2006).)

A parent of a child with a disability who disagrees with any decision by a school district regarding a change in educational placement of the child based upon a violation of a code of student conduct, or who disagrees with a manifestation determination conducted by the district, may request and is entitled to receive an expedited due process hearing. (34 C.F.R. § 300.532(a)(2006).) The procedural right that affords the parties an expedited due process hearing is mandatory and does not allow OAH to make exceptions. (34 C.F.R. § 300.532(c)(2).) In such event, “(T)he [state education agency] SEA or [local education agency] LEA is responsible for arranging the expedited due process hearing, which must occur within 20 school days of the date the complaint requesting the hearing is filed.” (34 C.F.R. § 300.532(c)(2) (2006).) In California, OAH is the hearing office that assumes this responsibility for the California Department of Education. (Ed. Code, § 56504.5, subd. (a).)

DISCUSSION

Student’s Issues 2 and 3 raise claims concerning the convening of an manifestation determination meeting, called a “manifestation determination IEP,” and challenge District’s determination of whether Student’s behavior was related to his disability and District’s proposed change in placement due to the manifestation determination. In the current motion, Student states that he meant to plead these issues as procedural violations rather than a disagreement with placement. Student further contends that the parties are close to resolving the issues subject to the expedited proceedings.

While OAH is not unsympathetic to the parties desire to avoid an expedited hearing, there is no process by which OAH can recast the issues or continue the expedited portion of this matter. It is unclear what Student asserts when stating that he did not intend to allege procedural violations. The Individuals with Disabilities Education Act (IDEA) is a procedural act. It guarantees to a disabled child certain procedural actions that a school district must take in order to provide a free appropriate public education. Within that context when a pupil alleges a violation of the procedural protections concerning manifestation determinations or challenges placement decisions due to disciplinary proceedings, the IDEA mandates that the matter proceed to an expedited hearing.

OAH has no option but to maintain the expedited hearing dates. The only means by which the parties can avoid the expedited proceedings is to provide proof that they have settled the allegations raised in Issues 2 and 3 of Student’s complaint, or Student must withdraw those issues in writing.

ORDER

Student's request to vacate expedited hearing dates is denied.

IT IS SO ORDERED.

Dated: March 8, 2013

/s/

BOB N. VARMA
Presiding Administrative Law Judge
Office of Administrative Hearings